

Assembly Bill No. 2136

CHAPTER 739

An act to amend Section 17538.9 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2136, Mendoza. Prepaid calling cards.

Existing law regulates the advertising and sale of prepaid calling cards and services. Existing law requires an advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to include specified information, and requires certain information to be legibly printed on a prepaid calling card. Existing law also requires a company that sells prepaid calling cards and services and a vendor to make certain disclosures regarding fees and surcharges on the card and packaging and at the point of sale, and requires the company to maintain a toll-free customer service telephone number, meeting specified requirements. Existing law requires a company that issues prepaid calling cards or services to provide a refund within 60 days to any purchaser of a card or services if the network services associated with the card or services fail to operate in a commercially reasonable manner. Existing law makes it a crime to violate any of these provisions.

This bill would instead require an advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to clearly and conspicuously disclose any geographic limitation and all ancillary charges and conditions, as specified. The bill would impose additional requirements upon a company that issues prepaid calling cards or services, including, upon a rate increase at the time of recharge, a requirement that the customer be informed of that increase prior to the customer agreeing to pay for the recharge. The bill would also require the information that is to be printed legibly on a card or packaging to be readable without having to open the packaging, and would require that information to be current, as specified. The bill would prohibit a person from offering or selling any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging, and would require a distributor that sells directly to a retail vendor to provide the vendor with the current information required to be displayed by the vendor. The bill would further require a company that sells prepaid calling cards and services to provide a voice prompt at the beginning of each call that states the number of minutes that are available for that call. The bill would require

a refund based on the failure of network services associated with prepaid calling cards or services to be made within 30 days.

By creating new requirements with respect to the advertising and sale of prepaid calling cards, the violation of which would be a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17538.9 of the Business and Professions Code is amended to read:

17538.9. (a) For the purposes of this section:

(1) “Ancillary charges” means all surcharges, taxes, fees, connection charges, maintenance fees, monthly or other periodic fees, per-call access fees, or other assessments or charges of any kind, however denominated, that may be imposed in connection with the use of a card or services, other than the per unit or per minute rate charged.

(2) “Cellular telephone services” means facilities-based, commercial mobile telephone services.

(3) “Company” refers to any entity providing prepaid calling services to the public using its own or a resold telecommunications network.

(4) “Distributor” means any person who offers or sells a card or services to a retail vendor or to any other person for ultimate resale to a retail vendor.

(5) “Prepaid calling card” or “card” means any object containing an access number and authorization code that enables a consumer to use prepaid calling services. It does not include any object of that type used for promotional purposes.

(6) “Prepaid calling services” or “services” refers to any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

(7) “Retail vendor” means any person who sells a card or service to a consumer for use in making telephone calls.

(b) The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services:

(1) Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services shall clearly and conspicuously disclose all of the following:

(A) Any geographic limitation to the advertised price, rate, or unit value.

(B) All ancillary charges and the conditions under which each applies. This disclosure shall be made prominently near the beginning of the

advertisement. In a written advertisement this disclosure shall appear in table form in a box with the bold label, “Other Charges.” The amount of each ancillary charge shall be identified in one column and the conditions under which each applies shall be stated on the same line in the column immediately to the right of the charge.

(2) The following information shall be legibly printed on the card:

(A) The name of the company.

(B) A toll-free customer service number.

(C) A toll-free network access number, if required to access service.

(D) The authorization code, if required to access service.

(E) The expiration date or policy, if applicable, except where paragraph (11) applies.

(3) The company shall print legibly on the card or packaging, so that it may be read without having to open any packaging, and the retail vendor shall make available clearly and conspicuously in a prominent area immediately proximate to the point of sale of the prepaid calling card or prepaid calling services the following information, which shall be current at the time of printing and for as long as it is displayed:

(A) The value of the card and all ancillary charges.

(B) Ancillary charges for international calls to each country for which the card may be used or, in lieu of disclosing ancillary charges for each country, the highest ancillary charges for any international calls applicable on that card and any additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services.

(C) The minimum charge per call, such as a three-minute minimum charge, if any.

(D) The definition of the term “unit,” if applicable.

(E) The billing decrement.

(F) The name of the company.

(G) The recharge policy, if any.

(H) The refund policy, if any.

(I) The expiration policy, if any.

(J) The 24-hour customer service toll-free telephone number required in paragraph (9).

(4) Before a customer has recharged a card or service, no company shall provide fewer minutes than those stated, charge more than the rate stated, or charge more for ancillary services than stated on the card or packaging, or in an advertisement available to the public at the time the card or service is purchased.

(5) Service may be recharged by the customer at a rate higher than the rate at initial purchase or last recharge. However, the customer shall be informed of any increased rates or charges prior to the customer agreeing to pay for the recharge.

(6) If a language other than English is used on the card or packaging to provide dialing instructions to place a call or to contact customer service, the information required by paragraph (3) shall also be disclosed in that

language in the point of sale disclosure in the manner described in paragraph (3).

(7) If a language other than English is used in the advertising or promotion of the card or prepaid calling services or is used on the card or packaging other than for dialing instructions, the information required by paragraph (3) shall also be disclosed in that language on the card or packaging and in the point of sale disclosure in the manner described in paragraph (3).

(8) A company shall provide a voice prompt, immediately after a caller enters a personal identification number and destination number, that states the number of minutes for that call if the entire remaining value of the card or service were consumed in one continuous call to the dialed destination, substantially in the following form:

“You have [insert number] minutes if used up in this call.”

(9) A company shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:

(A) A live operator shall answer incoming calls to the telephone number 24 hours a day, seven days a week.

(B) The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. The company shall provide customer service in each language used on a prepaid calling card or its packaging and in the advertising or promotion of the prepaid calling card or prepaid calling services.

(C) The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:

(i) All rates and ancillary charges.

(ii) The company's recharge, refund, and expiration policies.

(iii) The balance of use available in the consumer's account, if applicable.

(D) A company shall not impose any ancillary charge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

A company offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of this paragraph if, when a request for information is made outside of normal business hours, that company provides the information requested on the next business day.

(10) A company that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 30 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

(11) Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of purchase, or if recharged, from the date of the last recharge.

(12) In the case of prepaid calling cards or services utilized at a pay telephone, the company may provide voice prompt notification of any ancillary charges related to pay telephone usage, in lieu of providing notice of those ancillary charges as required by paragraph (1) and by subparagraph (A) of paragraph (3), provided that the company provides users of prepaid calling cards or services with reasonable time to terminate the call after notification of the ancillary charges related to pay telephone usage without incurring any charge for the call.

(13) A company shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

(14) A company may not impose any ancillary charges that are not disclosed as required by this section or that exceed the amount disclosed by the company.

(15) A company may not impose any charges if the consumer is not connected to the number called. For the purpose of this paragraph, the customer shall not be considered connected to the number called if the customer receives a busy signal or the call is unanswered.

(16) The value of the card and the amount of any ancillary charges, that are required to be disclosed by paragraph (3), shall be expressed in the same format. If the value of a card is expressed in minutes, the minutes shall be identified as domestic or international and the identification shall be printed on the same line or next line as the value of the card in minutes.

(17) No person shall offer or sell any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging as provided in paragraph (3).

(18) A distributor that sells directly to a retail vendor shall provide the retail vendor with the current information required by paragraph (3) in a form that may be displayed by the retail vendor as provided in paragraph (3).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.